

FILED

MAR 31 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LUIS ENRIQUE PONCE,

Petitioner,

vs.

B. CURRY,

Respondent.

C 07-0604 MJJ (PR)

**ORDER REOPENING FILE;
LIFTING STAY; GRANTING
LEAVE TO AMEND;**

(Docket Nos. 2, 3 6)

Petitioner, a California prisoner incarcerated at Pelican Bay State Prison, filed this pro se habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging his state court conviction. He requested a stay while he exhausted additional claims in the state court. That request was granted on July 17, 2007.

Petitioner has filed a motion to reopen the case, indicating that he has now exhausted his new claims. In granting the stay, the court instructed petitioner that if he wished to have this court consider his newly exhausted claims, he would have to file an amended petition "at the same time" as the motion to reopen the case. Petitioner has attached to his motion various state court habeas petitions and the original petition filed in this case, but he has not included a proposed amended federal habeas petition. In the July 17, 2007 order, the court cautioned petitioner:

If petitioner simply files a motion to reopen this action, but does not concurrently file an amended petition in compliance with the instructions set forth herein, this action will proceed only on the basis of the single claim set forth in the petition.

It appears from the attachments to the motion to reopen that petitioner means to proceed on

1 the basis of his newly exhausted claims in addition to the claim in the original petition. In
2 light of petitioner's pro se and incarcerated status, he will be granted one more opportunity to
3 present his newly exhausted claims in an amended petition.

4 The motion to reopen is GRANTED, the stay is LIFTED and the Clerk shall REOPEN
5 the file.


6 Leave to file a first amended petition is GRANTED provided that it is filed within
7 thirty (30) days of the date this order is filed, that it includes the caption and civil case
8 number used in this order, No. C 07-0604 MJJ (PR), and includes the words FIRST
9 AMENDED PETITION on the first page. In the amended petition, petitioner must include
10 all the claims he wishes to present, including both the newly exhausted claims and the
11 cognizable claim from the original petition.

12 Failure to file an amended petition in accordance with this order will result in this
13 action proceeding only on the basis of the single claim set forth in the original petition and
14 petitioner will not be able to present his newly exhausted claims.

15 This order terminates Docket Nos. 2, 3, & 6.

16 IT IS SO ORDERED.

17 DATED: 3/31/2008

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19 MARTIN J. JENKINS
20 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LUIS ENRIQUE PONCE,

Plaintiff,

v.

B. CURRY et al,

Defendant.

Case Number: CV07-00604 MJJ


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 2, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Luis Enrique Ponce
CTF-Central-GW-218
Prisoner Id T-89997
P.O. Box 689
Soledad, CA 9396-0689

Dated: April 2, 2008


Richard W. Wieking, Clerk
By: Monica Tutson, Deputy Clerk